'09 9L

Nos. 05-908, 05-915

IN THE

Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,
v.
SEATTLE SCHOOL DISTRICT NO. 1, ET AL.,
Respondents.

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioner,
v.
JEFFERSON COUNTY BOARD OF EDUCATION, ET AL.,
Respondents.

On Writ of Certiorari To The United States Courts of Appeal For The Sixth and Ninth Circuits

BRIEF AMICUS CURIAE OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION AND NATIONAL BASKETBALL RETIRED PLAYERS ASSOCIATION IN SUPPORT OF THE RESPONDENTS

LEBOEUF, LAMB, GREENE & MACRAE LLP
Counsel for Amici Curiae

Margaret A. Keane*
One Gateway Center
420 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(412) 594 2300
* Counsel of Record

Patrick J. Gennardo
Leonard J. Elmore
125 West 55th Street
New York, NY 10019
(202) 424-8000

Paul S. Jasper
Brett J. Kitei
One Embarcadero Ctr.
San Francisco, CA 94111
(415) 951-1100

AMERICAN FINANCIAL PRINTERS • (202) 464-5500

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I. INTEREST OF AMICUS CURIAE[1]

A. The NCAA's Interest.

The National Collegiate Athletic Association ("NCAA") is an association of over 1000 institutions, conferences, and organizations that governs the athletics programs of many colleges and universities in the United States. The NCAA is the largest collegiate athletic organization in the world. The NCAA is dedicated to the pursuit of excellence in both academics and athletics, and the highest levels of integrity and sportsmanship.

The NCAA is equally committed to enhancing opportunities for racial and ethnic minorities and women. In furtherance of this commitment, the NCAA -- through its member institutions, conferences and national office staff -- seeks to promote an inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds. The NCAA further seeks to strengthen the role that intercollegiate athletics plays in the higher education mission and to enhance the sense of community and strengthen the identity of member institutions.

Racial integration at the compulsory school level is critical to promoting the core values of the NCAA. The NCAA relies on primary and secondary schools to develop students qualified to succeed at the college level, both as students and as athletes. In the absence of voluntary

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[1] Letters of consent by all parties to the filing of this brief have been filed with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity, other than Amici Curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

integration programs such as those at issue in this case, the NCAA believes that the quality and performance of student-athletes at its member schools will fail to attain the highest level of achievement and may even decline. In particular, the NCAA's experience over the last 50 years indicates that student-athletes admitted from racially integrated compulsory schools exude a greater level of teamwork, racial tolerance, and achievement, both on and off the sports field.

B. The NBRPA's Interest.

The National Basketball Retired Players Association ("NBRPA," and collectively with the NCAA, "*Amici Curiae*") is a 501(c)(3) charitable organization consisting of retired professional basketball players from the National Basketball Association ("NBA"), the American Basketball Association ("ABA"), and the Harlem Globetrotters. The NBRPA's mission is to promote goodwill utilizing the game of basketball and to provide community leadership and responsibility through its variety of charitable and educational initiatives. The NBRPA has a membership of approximately 700 retired players of diverse racial and ethnic backgrounds with careers spanning from the NBA's inception in 1947 until as recently as 2006.

The NBRPA, as a signatory, supports the NCAA in this amicus brief to further underscore the enormous impact school integration has had, from K-12 through college, on its membership. The overwhelming majority of NBRPA's members are former student-athletes who attended and played for NCAA member institutions. A significant number of the NBRPA members attended racially diverse K-12 schools at one time or another.

II. SUMMARY OF ARGUMENT

The NCAA and NBRPA file as *amici curiae* in this case to emphasize the enormous positive impact of integration upon (i) the academic and professional success of student-athletes and (ii) the attitudes of student-athletes and millions of viewers of college sports towards persons of other racial and ethnic backgrounds. Based on decades of experience, the NCAA and NBRPA believe that exposure of student-athletes to persons of other races prior to college substantially improves their academic and professional success and leads to enhanced teamwork and positive interracial relations among teammates. Because of the media spotlight cast upon intercollegiate sports, student-athletes serve as role models to a very large segment of the American people. Accordingly, it is critical that these student-athletes exemplify the type of positive interracial relations and experiences that characterize a unified yet diverse citizenry.

Research has demonstrated that college students who come from integrated primary and secondary school settings have greater academic and professional success than college students whose first experience with diversity is at the college level. Moreover, students from integrated primary and secondary schools engage in more diverse extra-curricular activities and interact more genuinely with peers from different racial groups. Conversely, studies show that *de facto* segregation at the pre-college level is self-perpetuating in college and beyond.

In addition to its positive impact on individual student-athletes, integration in college sports has had an overwhelmingly positive impact on American society as a whole. Over the last sixty years, perhaps no medium has done more to foster racial tolerance and cross-racial

interaction in America than the athletic arena. Prior to the desegregation of either the military or of public education, and before African-Americans had full legal access to voting, racial barriers had begun to erode in American sports. The collective American conscience was profoundly affected when Jackie Robinson became the first African-American athlete to play major league baseball since the Jim Crow era. Likewise, the victory of Texas Western College's all-African-American starting lineup over the all-white lineup of the University of Kentucky in the 1966 NCAA Basketball Championship led to the nearly immediate desegregation of college athletic programs throughout the country.

The impact of these events is unquestionably magnified by the popularity and visibility of college sports on television, radio, and other media. Seen and admired by millions, college athletes are compelling and highly visible role models to the American public and, in particular, to American youth. College sporting events provide a fishbowl for the general public to observe genuine relationships between individuals of diverse ethnic and racial backgrounds. The far-reaching influence of college sports carries a great public responsibility -- namely, that college athletes of different races demonstrate interracial teamwork and positive attitudes towards each other.

Voluntary integration programs at the compulsory level help to ingrain positive attitudes in children about persons of other races. These programs enable student-athletes to enter college with a familiarity with other races developed during their most formative years. As a result, these programs make an irreplaceable contribution to the goal of *Amici Curiae* in cultivating successful student-athletes who set an example of genuine integration.

III. HISTORICAL BACKGROUND REGARDING INTEGRATION IN SPORTS

The treatment of minorities in sports has mirrored the racial views of popular society. In the decades following the Civil War, African-Americans were explicitly excluded from organized sports leagues. *See* Timothy Davis, *The Myth of the SuperSpade: The Persistence of Racism in College Athletics*, 22 FORDHAM URB. L.J. 615, 624-33 (1995). Segregation laws were strictly enforced in professional athletic programs and events for athletes and spectators alike. On college campuses, opportunities to compete in sports were limited by admissions policies and informal segregation policies. African-Americans were rarely admitted to college, and even if they succeeded in gaining admittance to the predominantly white colleges, the college athletics programs were limited to white students. Thus, even in states and institutions that did not have formal segregation laws or regulations, African-Americans were denied the opportunity to participate in college sports. Accordingly, African-Americans were relegated to competing against other African-American athletes in Negro leagues or historically black colleges. *Id.*

In 1947, Jackie Robinson became the first African-American athlete to play major league baseball since the Jim Crow era. R. Reese, Abstract, *The Socio-Political Context of the Integration of Sport in America*, 4 J. OF AFR. MEN (1999). "One could argue that Jackie Robinson coming to the plate in Brooklyn on April 15, 1947 was the most visible, and therefore in some ways most important, moment in recent American civil rights history." Kenneth L. Shropshire, Symposium, *Sports Law as a Reflection of Society's Laws and Values: Where Have You Gone, Jackie Robinson? Integration in America in the 21st Century*, 38 S. TEX. L.

REV. 1043, 1043 (1997). Indeed, Jackie Robinson's courage broke the color barrier and ultimately led to the integration of all professional sports.

During the 1950s to 1960s, the civil rights movement continued to gain momentum and open doors for African-American student-athletes. With the landmark decision of *Brown v. Board of Education* in 1954, African-American students gained entrance to previously all-white colleges and universities. "Darryl Hill of the University of Maryland broke the Atlantic Coast Conference's color line in 1963. In 1965, basketbal' player James Cash became the first black basketball player in the Southwestern Conference. The Southeastern Conference [began]... the integration process... [when] the University of Kentucky football team signed Nat Northington and Greg Page in 1966." R. Reese, Abstract, *The Socio-Political Context of the Integration of Sport in America*, 4 J. OF AFR. MEN (1999). School desegregation ushered in a significant change to the racial make-up of both college and professional sports. For example, "in 1948 - 10% of college basketball teams had a black member. By 1966 - 45% of college basketball teams had a black member." Forrest Berghorn & Norman Yetman, Black Americans in Sport: The Changing Pattern of Collegiate Basketball (1976) (unpublished paper, University of Kansas). In the professional arena, previously all-white leagues began to accurately reflect the percentage of Africa-Americans in the population. By the early 1960s, the percentage of African-Americans playing in the NBA, NFL, and MLB equaled the proportion of African-Americans in the US population. *See* Race and Sports, http://www.science-.smith.edu/exer_sci/ESS200/Raceh/Raceh.htm (last visited Oct. 6, 2006).

The 1966 NCAA Basketball Championship also had a profound effect on the attitudes of Americans towards persons of other races. That game, in which the Texas Western College Miners used a starting lineup of all African-American players and went on to defeat the heavily favored University of Kentucky Wildcats, has been called the *Brown v. Board of Education* of sports. In a press conference leading up to the game, it was rumored that Kentucky coach Adolph Rupp said five African-American players could not defeat five white players. In response, Texas Western coach Don Haskins made the decision to put only African-American players in the game. After Texas Western defeated Kentucky, the landscape of intercollegiate sports began to change. "One consequence of the game was that the Southeastern Conference integrated immediately. Barely a month after the game, all-white Vanderbilt signed its first black player." Josh Centor, *Championing Diversity*, THE NCAA NEWS, Sept. 11, 2006, (quoting David Lattin, *Slam Dunk to Glory* (2006)), *available at* http://www.ncaa.org-/wps/portal (last visited Oct. 6, 2006).

The impact of civil rights legislation and the introduction of affirmative action in the 1960's and 1970's not only led to participation and acceptance of African-Americans in college and professional sports, but also created opportunities for people of color to become coaches and athletic directors. Indeed, opportunities expanded exponentially for African-Americans as head college basketball coaches, such as John Thompson and Nolan Richardson, both of whom led their respective teams to multiple winning seasons and national championships.

IV. ARGUMENT

A. Participation In An Integrated Compulsory School Environment Provides Invaluable Benefits To College Student-Athletes.

Compulsory school sports programs prepare student-athletes to interact positively with teammates of other races and ethnic backgrounds. These lessons are particularly important because the early education years are crucial for the formation of the child's own racial identity and attitudes towards persons of other races. Moreover, racial perspectives formed during the compulsory school years tend to be perpetuated during college and later life.

1. An Integrated Classroom Instills Student-Athletes With Racial Tolerance And Understanding.

College sports programs benefit from student-athletes' exposure at the compulsory school level to students of different races and ethnic backgrounds. Desegregation studies have generally found that students in racially diverse schools will have more positive attitudes and achieve stronger social ties with students from other racial groups as opposed to students from less diverse schools. *See* Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 835 (James A. Banks ed., 2d ed. 2004); Jeffrey F. Milem, *Influence of Precollege Factors on Students' Predispositions Regarding Diversity Activities in College*, 44 J. OF C. STUDENT DEV. 611, 611-24 (2003) (citing J. H. Braddock, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact Hypothesis*, 53 SOC. OF EDUC. 178, 178-86 (1980); J.

H. Braddock & J. M. McPartland, *Assessing School Desegregation Effects: New Directions in Research*, 3 RESEARCH IN SOCIOLOGY OF EDUCATION AND SOCIALIZATION 259-82 (1982)). Such research concludes that both white and nonwhite students in racially diverse schools demonstrate less racial bias than those in less integrated schools. J. H. Braddock & J. M. McPartland, *Social-Psychological Processes that Perpetuate Racial Segregation: The Relationship Between School and Employment Desegregation*, 19 J. OF BLACK STUD. 267, 285 (1989); Maureen T. Hallinan & Stevens S. Smith, *The Effects of Classroom Racial Composition on Students' Interracial Friendliness*, 48 SOC. PSYCHOL. Q. 3, 13-14 (1985); A. S. Wells & R. L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 REV. OF EDUC. RES. 531, 552 (1994). The studies have also found that an increase in interracial contact among students creates more interracial sociability and friendship. Maureen T. Hallinan & Stevens S. Smith, *The Effect of Classroom Composition on Students' Interracial Friendliness*, 48 SOC. PSYCHOL. Q. 3, 13 (1985). By contrast, data shows that both white and African-American students in segregated schools are more likely to dislike persons of the opposite race than students in integrated schools. *See* Susanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominately White, and Black Schools*, 138 J. SOC. PSYCHOL. 41, 50 (1998).

A recent comprehensive review of over 200 empirical studies highlighted the importance of "face-to-face contact" between children of different races. In their review, Thomas

Pettigrew[2] and Linda Tropp[3] emphasized the significant correlation between in-person social interaction among children from multiple cultures and reduced acceptance of racial stereotypes. Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 831-32 (James A. Banks ed., 2d ed. 2004) (citing T. F. Pettigrew & L. Tropp, *Does Intergroup Contact Reduce Prejudice? Recent Meta-Analytic Findings*, REDUCING PREJUDICE AND DISCRIMINATION 93-114 (S. Oskamp ed., 2000)).

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[2] Thomas Pettigrew is a professor of social psychology at the University of California, Santa Cruz. He received a Ph.D. from Harvard University in 1956 and taught at Harvard from 1957-1980. During 2000-2001, he held the title of "Senior Fellow" at the Research Institute for the Comparative Study of Race and Ethnicity at Stanford University. From 1967-68 he was president of the Society for the Psychological Study of Social Issues. The Society later awarded him with the prestigious Gordon Allport Intergroup Research and Kurt Lewin Awards. He also won The American Sociological Association's Sydney Spivack Award for Race Relations Research in 1979, and in 2002, he won the Distinguished Scientist Award from the Society for Experimental Social Psychology. Dr. Pettigrew's work has been cited in numerous social science studies on race relations.

[3] Linda R. Tropp is currently an assistant professor of psychology at Boston College. She received her Ph.D. from the University of California, Santa Cruz. Dr. Tropp's work focuses on the affect of interracial social contact on members of minority and majority groups, and the reactions of historically oppressed groups to prejudice and disadvantage. Her publications include research on social identity and identification with social groups, psychological and behavioral responses to prejudice and disadvantage, intergroup contact from the perspectives of minority and majority groups, and acculturation and identity negotiation among members of minority groups.

Likewise, a 1996 examination of desegregation effects determined that interracial contact facilitated students' ability to relate to and respect members from peer groups comprised of other races. *See* Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 832 (James A. Banks ed., 2d ed. 2004) (citing L. Sigelman et al., *Making Contact? Black-White Social Interaction in an Urban Settings*, 101 AM. J. OF PSYCHOL. 1306, 1306-32 (1996)) ("[I]n-home interviews with 1,124 African American and White adult residents of the Detroit metropolitan area show that for both groups, early school desegregation experiences are positively related to casual interracial contacts and to close interracial friendships.").

Perhaps most importantly, studies have frequently shown that children and adults themselves attach great value to cross-racial interaction. A collection of interviews with over 500 high school graduates, teachers, advocates, and policymakers revealed that "the vast majority of graduates across racial and ethnic lines greatly valued the daily cross-racial interaction in their high schools. They found it to be one of the most meaningful experiences of their lives, the best – and sometimes only – opportunity to meet and interact regularly with people of different backgrounds." Brief for The Civil Rights Project at Harvard University as Amicus Curiae Supporting Respondents, *Comfort v. Lynn Sch. Comm.*, 418 F.3d 1 (1st Cir. 2005) (No. 03-2415).

2. Integrated Sports Programs Have Tremendous Potential To Unify Racial Groups And Promote Cross-Racial Understanding.

As Justice Powell has noted, "'[a] great deal of learning occurs informally *** through interactions among students *** of different races *** who are able, directly or indirectly, to learn from their differences. *** For many [students] ***, the unplanned casual encounters with roommates, fellow sufferers in organic chemistry class, student workers in the library, teammates on a basketball squad, or other participants in class affairs or student government can be subtle and yet powerful sources of improved understanding and personal growth.'" *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 n.48 (1978) (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WEEKLY, Sept. 26, 1977, at 7, 9).

School sports programs at the compulsory level have tremendous potential to unify racial groups and promote cross-racial understanding. Numerous studies have found that sports provide key social contexts for students of different backgrounds to interact "(1) as equals, (2) in a cooperative way, and (3) with shared goals." Jomills Henry Braddock II et al., *Intercultural Contact and Race Relations Among American Youth*, TOWARD A COMMON DESTINY 249 (Willis D. Hawley & Anthony W. Jackson eds., 1995); *see also* Tony N. Brown et al., *There's No Race on the Playing Field*, 27 J. OF SPORTS & SOC. ISSUES 162, 170 (2003) (explaining that participation in integrated sports programs has a unifying effect); James S. Jackson et al., *Athletic Identity, Racial Attitudes, and Aggression in First-Year Black and White Intercollegiate Athletes*, PARADOXES OF YOUTH AND SPORTS 162 (Margaret Gatz et al., eds., 2002)

(citing G. Allport, THE NATURE OF PREJUDICE (1954); T. F. Pettigrew, *Intergroup Contact Theory*, 49 ANN. REV. OF PSYCHOL. 63, 63-85 (1998)). Indeed, some of the most striking advances in eradicating racial segregation have been made in the field of sports. T. F. Pettigrew, *Intergroup Contact Theory*, 49 ANN. REV. OF PSYCHOL. 63, 63-85 (1998) ("The athletic arena is a domain that requires positive group-based interactions in order for team members to experience success, and in fact is one of the few realms in which all of the essential conditions for reducing prejudice are met. Specifically, the contact occurs between individuals with equalized status in the situation, the contact entails purposeful activity toward common goals fostering interdependence, the contact is cooperative, and the contact is socially sanctioned.").

In addition, greater contact by white student-athletes with African-American student-athletes during high school leads to more positive views toward African-Americans at the collegiate level. James S. Jackson et al., *Athletic Identity, Racial Attitudes, and Aggression in First-Year Black and White Intercollegiate Athletes*, PARADOXES OF YOUTH AND SPORTS 167 (Margaret Gatz et al., eds., 2002). According to Jomills Henry Braddock II,[4] "[e]xtracurricular activities can offer unique and important opportunities for positive cross-

[4] Jomills Henry Braddock is a professor of sociology at the University of Miami and served as the chair of the University's Department of Sociology from 1992 to 1999. He received his Ph.D. in sociology from Florida State University. Dr. Braddock has authored and collaborated on numerous studies analyzing the effects of racial integration in sports programs and early education. Dr. Braddock is currently serving as the director of the Center for Research on Sport in Society and has previously served two terms on the National Educational Research Policy and Priorities Board.

race contacts among students if the various clubs and teams recruit from all groups and permit leadership roles to be held by students of diverse backgrounds." Jomills Henry Braddock II et al., *Intercultural Contact and Race Relations Among American Youth*, TOWARD A COMMON DESTINY 247-48 (Willis D. Hawley & Anthony W. Jackson eds., 1995).

3. The Early School Years Help Crystallize The Child's Own Racial Identity And Attitudes Towards Persons Of Other Races.

The early school years are crucial for the formation of the child's own racial identity as well as an understanding of prejudice and fairness. "[W]hen integration occurs at earlier ages..., children are still in the process of forming their understanding and attitudes about race, unlike adults or even college-aged students who have spent many years internalizing racial attitudes from our still-segregated society." THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY ET AL., LOOKING TO THE FUTURE: VOLUNTARY K-12 INTEGRATION (2005).

"[D]irect student experience with racial diversity corresponds to increased cultural awareness and commitment to promoting racial understanding. This exposure comes at a critical time in students' lives: the [classroom] in essence serves as a controlled microcosm previewing the larger society and working world into which the students will graduate." Jonathan R. Alger, *The Educational Value of Diversity*, 83 ACADEME: BULLETIN OF THE AAUP 20, 20-23 (1997). At between five and eight years old, children begin to form perceptions about their own identity and the differences between themselves and others. Caryl M. Stern-LaRosa, *Talking to your Child about Hatred and Prejudice*,

ANTI-DEFAMATION LEAGUE, 2001, http://www.adl.org-/issue_education/hateprejudice/Prejudice3.asp (last visited Oct. 6, 2006). By the time children reach eight to twelve years old, they are capable of internalizing and applying social stereotypes and prejudices in their life choices. *Id.* Thus, the need for exposure to other races is urgent in elementary and secondary schools, as the benefits of cross-racial interaction are most profound at younger ages. *See* Susanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominately White, and Black Schools*, 138 J. SOC. PSYCHOL. 41, 42 (1998).

Social science studies further indicate that children in integrated schools are more likely to form deeper attachments to peers from other racial groups than are children in non-integrated schools. Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 832 (James A. Banks ed., 2d ed. 2004) (citing J. W. Schofield & W. A. Sagar, *Peer Interaction Patterns in an Integrated Middle School*, 40 SOCIOMETRY 130, 130-39 (1977)). In forming these social bonds, "students of different races may discover that their political beliefs or extracurricular interests provide as much or more common ground as does race. No textbook or computer can substitute for the direct personal interaction that leads to this type of self-discovery and growth." Jonathan R. Alger, *The Educational Value of Diversity*, 83 ACADEME: BULLETIN OF THE AAUP 20, 20-23 (1997); *see also* Walter G. Stephan & John C. Brigham, *Intergroup Contact: Introduction*, 41 J. SOC. ISSUES 1, 1-2 (1985) (finding that interracial and cross-cultural contacts at a young age diminish prejudice and promote greater understanding primarily when they occur among individuals

of equal status); *Expert Report of Patricia Gurin*, 5 MICH. J. RACE & L. 363, 365-66 (1999) (explaining that schools, not businesses, are best suited to offer a forum for cross-cultural contact among a society of equals, free of hierarchy).

4. Racial Perspectives Formed During The Compulsory School Years Tend To Be Perpetuated At The Higher Education Level And Thereafter.

Multiple studies have revealed that racial segregation is self perpetuating for both minorities and majorities. Segregation experienced in elementary through high school impedes students from forming cross-racial friendships in college. According to a study authored by Jeffrey Milem,[5] students demonstrated that they were less likely to segregate themselves by race if their school extracurricular activities, such as sports programs, were integrated. Jeffrey F. Milem, *Influence of Precollege Factors on Students' Predispositions Regarding Diversity Activities in College*, 44 J. of C. Student Dev. 611, 611-24 (2003).

It has long been established in the social science community that children attending desegregated schools are more likely to associate with people of all races in their

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[5] Jeffrey F. Milem is an associate professor at the University of Maryland and graduate program director for the higher education administration program in the Department of Education Policy and Leadership in the College of Education. He received his Ph.D. in higher education from the University of California, Los Angeles. Dr. Milem is widely recognized as an expert in the area of racial dynamics in higher education, and has been commissioned to do research by the Institute of Medicine of the National Academies, the Harvard Civil Rights Project, the American Council on Education, and the American Educational Research Association's Panel on Racial Dynamics in Higher Education.

future professional careers, and are less likely to segregate themselves by race at the collegiate level. "The earliest empirical documentation of the perpetuation of segregation showed that African Americans who attended desegregated schools were more likely to function in desegregated environments in later life." Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 833 (James A. Banks ed., 2d ed. 2004) (citing R. L. Crain, *Making Desegregation Work: Extracurricular Activities*, 13 THE URB. REV. 121, 121-27 (1981); R. L. Crain et al., MAKING DESEGREGATION WORK: HOW SCHOOLS CREATE SOCIAL CLIMATES (1982)).These studies concluded that adults with a desegregated background tended to live in more racially diverse neighborhoods, have racially diverse friends, and have children who attended desegregated schools. *Id.*

In particular, a comprehensive study on the recent pattern of school resegregation examined the long-term benefits of racially and ethnically diverse schools. In a collaborative effort with the NAACP and The Center for the Study of Race and Law at the University of Virginia School of Law, researchers at Harvard University's Civil Rights Project cited evidence indicating that students who attended desegregated schools were more likely to lead integrated lives as adults, in settings such as higher education, housing, and the workplace. THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY ET AL., LOOKING TO THE FUTURE: VOLUNTARY K-12 INTEGRATION 17 (2005). The Civil Rights Project cites research conducted by Amy Wells and Robert Crain who, after reviewing twenty-one studies, concluded that there is indeed a relationship between school and workplace segregation. *Id.* at 16. On the whole, social scientists with expertise in education agree that attending heterogeneous

schools leads "to a greater ability to work with and understand people of backgrounds different than one's own, and to more fully participate in a rapidly changing democratic society." *Expert Report of Patricia Gurin*, 5 MICH. J. RACE & L. 363, 365-66 (1999).

The need for integration at the compulsory school level is crucial because segregation in students' pre-college environment is escalating to the point where college may provide students with the first and only opportunity to connect with peers of other races. *See id.*; *see also* Brief for General Motors as Amicus Curiae Supporting Respondents, *Grutter v. Bollinger et al.*, 539 U.S. 306 (2003) (No. 02-241); *Gratz v. Bollinger et al.*, 539 U.S. 244 (2003) (No. 02-516). "One of the costs of segregation, paid by children of all races, is that young people are insulated from interracial contact. Neither whites, nor blacks, nor Hispanics, nor Asians come into daily contact with a mix of people that fully reflects the growing diversity of the region." JOHN R. LOGAN ET AL., LEWIS MUMFORD CENTER FOR COMPARATIVE URBAN AND REGIONAL RESEARCH UNIVERSITY AT ALBANY, SEGREGATION IN NEIGHBORHOODS AND SCHOOLS: IMPACTS ON MINORITY CHILDREN IN THE BOSTON REGION (September 1, 2003).

B. In Their Capacity As Role Models, Student-Athletes Must Exemplify The Type Of Positive Interracial Relations And Experiences That Characterize A Unified Yet Diverse Citizenry.

Participation in an integrated compulsory school classroom environment helps to develop collegiate athletes into positive role models by instilling racial tolerance and understanding. In light of the influence of collegiate athletes

upon millions of fans, the positive effects of racial integration are modeled and instilled into the American public as a whole.

In today's society, those who excel in collegiate athletics are admired and even idolized by an enormous fan base. People of all ages and from all walks of life yearn for the skills and abilities of their favorite players, and pay close attention to what student-athletes do both in and out of the game.

Given the popularity and visibility of intercollegiate sports, the actions and achievements of college athletes on and off the field are replayed and broadcast to millions of viewers each day. These athletes are constantly on television, in print media, and on internet websites. It is therefore critical that college athletes exemplify the type of positive interracial relations and experiences that characterize a unified yet diverse citizenry.

The far-reaching influence of college sports carries a great public responsibility -- namely, that college athletes of different races exemplify interracial teamwork and positive attitudes. As discussed at length above, these positive attitudes are best learned and cultivated through integration and exposure at the compulsory school level. *See* Jonathan R. Alger, *The Educational Value of Diversity*, 83 ACADEME: BULLETIN OF THE AAUP 20, 20-23 (1997) (explaining that direct student experience with racial diversity corresponds to increased cultural awareness and commitment to promoting racial understanding). Indeed, public schools play an integral role as socializing institutions in transmitting society's culture and values to its young, as well as preparing them with appropriate knowledge and skills for leading

productive and fulfilling adult lives. Jomills Henry Braddock II et al., *Intercultural Contact and Race Relations Among American Youth*, TOWARD A COMMON DESTINY 243 (Willis D. Hawley & Anthony W. Jackson eds., 1995).

It is therefore essential that our nation's future college athletes attend racially diverse compulsory schools to ensure that they are exposed to racially diverse peers and have the necessary contact and experience with other races to become good role models both on and off the field.

C. Integration At The Compulsory School Level Has Had, And Continues To Have, An Enormously Positive Impact On The Academic And Professional Success Of Student-Athletes.

Integration at the compulsory school level has had, and continues to have, an enormously positive impact on the individual success of student-athletes in the classroom and the workplace. Indeed, multiple studies demonstrate that the academic and professional success of student-athletes at the collegiate level is greatly enhanced when such students come from an integrated compulsory school system.

1. Academic Performance Is Positively Impacted by Racial Integration.

Over the past decade, numerous studies performed at the district, state, and national level have found that students who attend racially diverse elementary and secondary schools achieve higher academic success than similar students who attend schools that are predominantly one race.

Racially integrated schools provide a better academic setting for all students, and can lead in particular to increased

achievement among minority students. THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY ET AL., LOOKING TO THE FUTURE: Voluntary K-12 Integration 16 (2005). Differences among students allow them to "stimulate one another to reexamine even their most deeply held assumptions about themselves and their world," teaching them to view issues from multiple perspectives. *Regents of University of California v. Bakke*, 438 U.S. 265, 313 n.48 (1978) (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WEEKLY, Sept. 26, 1977, at 7, 9).

For example, a comprehensive study of school segregation and student achievement in North Carolina's Charlotte-Mecklenburg school district found that "the proportion of elementary education spent in racially identifiable African American schools had direct negative effects of end-of-course test scores and high school track placement." Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 830 (James A. Banks ed., 2d ed. 2004). In addition, the study also found that segregation at the elementary school level "has indirect effects through sixth-grade standardized test scores and high school track placement on later academic outcomes like Scholastic Aptitude Test (SAT) scores and high school grade point average (GPA)." *Id.* (citing R.A. Mickelson, *Subverting Swann: Tracking and Second Generation Segregation in Charlotte-Mecklenburg Schools*, 38 AM. EDUC. RES. J. 215, 215-252 (2001)).

At the state level, a 1996 analysis of data from Louisiana concluded that "holding constant family, individual, and school-level influences on achievement, both African American and White students scored lower in

schools with high concentrations of minority students and that African American students' achievement increased as the proportion of their schoolmates who were White increased." Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 830 (James A. Banks ed., 2d ed. 2004) (citing C. Bankston & C. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, 75 SOCIAL FORCES 535, 535-552 (1996)).

On the national level, a 1999 study analyzing standardized test scores in math and reading found that "both African-American and white students who attended desegregated schools achieved higher results than students who attended schools that were predominantly one race." Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 831 (James A. Banks ed., 2d ed. 2004) (citing J. Schiff et al., Organizational Context for Student Achievement: The Case of Student Racial Composition (April 1999) (unpublished paper, presented at the meeting of the American Educational Research Association)).

Finally, a 2006 study conducted by the University of Central Florida on college graduation rates revealed that student-athletes, who were exposed to a more diverse and racially integrated environment, had a higher graduation rate than the general student body. *See* New Study Reveals Marked Improvements for the Graduation Rates for African-American Student-Athletes (April 6, 2006), http://www.-bus.ucf.edu/sport/public/downloads/NSAD_2006_Study_-Grad_Rate_Improvements.pdf (last visited Oct. 6, 2006).

Specifically, the study determined that student-athletes had a 62% graduation rate versus the general student population's 59% rate. Even more striking, the divergence between graduation rates of African-American student-athletes and general African-American students was 52% compared to 43%. Richard Lapchick, director of the Institute for Diversity and Ethics in Sport at the University of Central Florida, attributes the significant increase in graduation rates for African-American athletes in part to participation in integrated athletic programs. *Id.*

Based upon the results of these studies, it is undeniable that children who attend racially diverse schools generally achieve higher academic success than those who attend schools with more homogenous student bodies. *See* Jeffrey F. Milem, *Influence of Precollege Factors on Students' Predispositions Regarding Diversity Activities in College*, 44 J. OF C. STUDENT DEV. 611, 611-24 (2003).

2. Racial Integration Increases Opportunities For Success.

In addition to greater academic achievement, college students who come from integrated pre-college settings have far greater professional success than college students whose first experience with diversity is at the college level.

Recent studies demonstrate that racial diversity in compulsory schools positively contributes to "(1) the development and persistence of plans by African American students to enter professional and nontraditional occupations where they are underrepresented; (2) employer preferences for hiring African Americans from desegregated schools over African Americans (similarly qualified) from segregated schools; and (3) being employed in ethnically

diverse work environments." Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 834 (James A. Banks ed., 2d ed. 2004).

Not only has racial integration at the compulsory school level been found to improve a student's ability to deal with colleagues, customers, employees, and partners of diverse backgrounds in business, but it also increases "the pool of contacts and informants from whom African Americans can obtain information about available jobs." Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation*, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 834 (James A. Banks ed., 2d ed. 2004). In addition, studies indicate that students from racially integrated elementary and secondary schools are more likely to work in desegregated offices than those students who attend schools that are predominantly one race. Marvin P. Dawkins & Jomills Henry Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. OF NEGRO EDU. 394, 397 (1994) (citing J. H. Braddock et al., Desegregated Schools and Desegregated Work Environments (1984) (unpublished paper, presented at the American Educational Research Association Annual Meeting)).

D. The Court Has Recognized Promotion Of Racial Diversity As A Compelling State Interest.

A conclusion that voluntary integration programs serve a compelling state interest is consistent with, and all but compelled by, this Court's jurisprudence. The Court has consistently recognized that racial diversity in the classroom

is a compelling state interest. Indeed, as early as the Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483, 492 (1954),[6] which focused on the "[e]ffect of segregation itself on public education," racial diversity, in an educational context, has been viewed as a compelling state interest. Because "[e]ducation is perhaps the most important function of state and local governments," and "[i]t is a principal instrument in awakening the [student] to cultural values," the goal of achieving racial diversity is viewed approvingly through the compelling state interest prism. *Id.* at 493.

Building on *Brown*, the Court's later opinion in *Regents of the University of California v. Bakke*, 438 U.S. 265, 320 (1978), clearly established that "[t]he contribution of diversity is substantial" such that a state has a compelling interest in allowing race and ethnic origin to be factors in shaping an admissions program. *Bakke* embodies the Court's laudable view that "[t]he attainment of a diverse student body...is a constitutionally permissible goal" in the educational context. *Id.* at 313.

Thereafter, the Court has repeatedly and consistently reaffirmed that there is a compelling state interest in promoting racial diversity in the classroom. *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 286 (1986) (O'Connor, J., concurring in part) (noting that "the promotion of racial

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[6] Notably, the *Brown* court relied on prior decisions which recognized the importance of racial diversity in education. *See Brown*, 347 U.S. at 493, *citing Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (observing that learning "[c]annot be effective in isolation" from diverse individuals); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 641 (1950) (finding that African-American student was entitled to equality and "[t]o engage in discussions and exchange views with other students").

diversity has been found sufficiently 'compelling,' at least in the context of higher education, to support the use of racial considerations in furthering that interest"); *Washington v. Seattle School District No. 1*, 458 U.S. 457, 460, 472-74 (1982) (holding that state law which permitted local school boards to assign students away from neighborhood schools for virtually all purposes required by their educational policies *except racial desegregation* violated the equal protection clause); *North Carolina Board of Education v. Swann*, 402 U.S. 43, 45-46 (1971) (invalidating state law proscription against student assignments made on basis of race as such law deprives school boards of the one tool absolutely essential to fulfillment of constitutional obligation to eliminate school segregation).

Thus, the Court has recognized that properly designed voluntary integration plans that utilize racial considerations can meet the high burden of addressing a compelling governmental interest. *See, e.g., North Carolina Bd. of Educ. v. Swann*, 402 U.S. 43, 45-46 (1971); *Washington v. Seattle School District No. 1*, 458 U.S. 457, 460, 472-474 (1982) (striking down measure that would have restricted a school district's power to address *de facto* segregation for the purpose of augmenting education and concluding that, "in the absence of a constitutional violation, the desirability and efficacy of school desegregation are matters to be resolved through the political process.")

This line of reasoning remains uninterrupted through the present. As recently as the Court's decision in *Grutter v. Bollinger*, 539 U.S. 206 (2003), the Court found that diversity in education was sufficiently compelling to permit the use of racial classifications that would be otherwise impermissible under the Fourteenth Amendment.

E. The Court Should Defer To The Seattle And Louisville School Districts' Determination That Increasing Racial Diversity In Their Schools Is A Compelling Interest.

As an association of institutions, conferences, and organizations that governs the athletics programs of many colleges and universities in the United States, the NCAA urges the Court to follow its tradition of deferring to the judgment of local government entities like the Seattle and Louisville school districts as to the best manner to educate its students, including determining the constituency of its student bodies. As this Court has recognized, it is essential that school districts be allowed the discretion they need to foster a racially integrated environment. School districts must have the discretion to design assignment policies and programs that will prepare students to be tolerant citizens in a racially diverse society. In light of these complex educational policy issues, the NCAA believes, and the Court's prior decisions make clear, that local government authorities, and not the courts, are the best entities to make these policy decisions. *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003).

In *Grutter*, the Court deferred to the academic judgment of law school officials that diversity did indeed produce numerous benefits. *Grutter v. Bollinger*, 539 U.S. at 328-29. It did so in light of the Court's traditional deference "to a university's academic decisions," which "includes the selection of its student body." *Id.* (citation omitted). The Court thus accepted the law school's assertion that achieving a diverse student body was "at the heart" of its proper institutional mission and presumed that the law school was acting in good faith to accomplish that mission. *Id.* at 329.

Public schools should be afforded similar deference based on the tradition of local control. In numerous desegregation decisions, the Court has recognized that the tradition of local control is "deeply rooted," "vital," and worthy of the Court's respect. *Milliken v. Bradley*, 418 U.S. 717, 741 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools . . . ."); *Freeman v. Pitts*, 503 U.S. 467, 490 (1992) ("As we have long observed, 'local autonomy of school districts is a vital national tradition.'") (citation omitted); *see also Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 248 (1991) (emphasizing the importance of local control over criteria for terminating desegregation decrees).

The history of desegregation litigation strongly supports judicial deference to local school administrators' judgment. "School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (holding, *inter alia*, that limited use of mathematical ratios of white to African-American students, not as an inflexible requirement, but as starting point in shaping a remedy, was within a court's equitable remedial discretion).

Indeed, in *Bustop, Inc. v. Bd. Of Educ.*, 439 U.S. 1380, 1381 (1978), the companion case to *Swann*, Justice Rehnquist, among the strongest critics of both school desegregation cases and race-conscious government action, declined to interfere with a desegregation order entered by the California Supreme Court, stating that "[w]hile I have the gravest doubts that the Supreme Court of California was

required by the United States Constitution to take the action that it has taken in this case, I have very little doubt that it was *permitted* by that Constitution to take such action."

Following *Swann* and *Bustop*, the Supreme Court in *Milliken v. Bradley* stated that "local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process." *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974). The Court further observed that "local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence.'" *Id.* at 742 (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 50 (1973)).

Preparing our nation's students to function effectively in society and to thrive in sports, at work or anywhere else, is such an important goal that it must be addressed by those entities best equipped to develop and execute an appropriate plan. Accordingly, school administrators must be free to assess the individual needs of their particular schools.

V. CONCLUSION

As demonstrated above, racial integration at the compulsory school level has conferred, and continues to confer, significant benefits on the academic and professional success of intercollegiate student-athletes. Moreover, because student-athletes serve as role models for a very large segment of the American people, it is critical that they exemplify the type of positive interracial relations and experiences that characterize a unified yet diverse citizenry.

For these reasons, the Sixth and Ninth Circuit Courts of Appeals' decisions that racial diversity is a compelling state interest should be affirmed.

Respectfully submitted,

LEBOEUF, LAMB, GREENE & MACRAE LLP

Margaret A. Keane*
One Gateway Center
420 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(412) 594 2300

Patrick J. Gennardo
Leonard J. Elmore
125 West 55th Street
New York, NY 10019
(202) 424-8000

Paul S. Jasper
Brett J. Kitei
One Embarcadero Ctr.
San Francisco, CA 94111
(415) 951-1100

* Counsel of Record

Counsel for Amici Curiae
The National Collegiate Athletic Association and
The National Basketball Retired Players Association

APPENDIX

The following former student-athletes, each an alumnus of various NCAA member institutions, and currently members of the NBRPA, add their names to underscore the NBRPA's amicus participation:

Zaid Abdul
Al Attles
Thurl Bailey
Rick Barry
Ulysses "Junior" Bridgeman
Fred Brown
Ken Charles
Archie Clark
Dwight Davis
Franklin Edwards
Len Elmore
Fred Hetzel
Tom Hoover
Eddie Huges
Don Kojis
C.J. Kupec
Paul Long
Jim McIlvaine
Stan McKenzie
Eric Money
Earl Monroe
Jerrod Mustaf
Wally Osterkorn
Larry Rivers
Flynn Robinson
Talvin Skinner
William Earl Tatum
Sedric Toney